

RECORDING REQUESTED BY:

Department of General Services
Real Estate Service Division
707 3rd Street, Suite 6-130
West Sacramento, California 95605
Attn: Frank Davidson

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Coastal Cleanup Operations Branch
700 Heinz Avenue
Berkeley, California 94710
Attention: Barbara J. Cook

NCS 1226995C

DOCUMENT: 18063721



Pages: 12

Fees.....	40.00
Taxes....	
Copies..	
AMT PAID	40.00

BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
First American Title Company

RDE # 008
10/26/2004
8:00 AM

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: Agnews Developmental Center, Lickmill Park Property)

This Covenant and Agreement ("Covenant") is made by and between the State of California, acting by and through the California Department of General Services (the "Covenantor"), the current owner of property situated in the City of Santa Clara, County of Santa Clara, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the California Department of Toxic Substances Control (the "Department").

Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 3.40 acres is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by the Guadalupe

River on the east, the Rivermark subdivision Tract number 9553 on the north, Lick Mill Boulevard on the west and the Mansion Grove Apartments on the south, in the City of Santa Clara, County of Santa Clara, State of California. The Property and the property which the Mansion Grove Apartments occupy are considered part of the Mansion Grove Site.

1.02. The Property is being remediated under the supervision and authority of the Department. It is being remediated pursuant to the Remedial Action Plan for the Mansion Grove Site dated November 29, 1994 (Mansion Grove RAP) issued in accordance with Remedial Action Order for the Mansion Grove Site, Docket No. HSA 88/89-019 and the Remedial Action Plan for the Rivermark Development dated November 20, 2000 (Rivermark RAP) issued under a voluntary cleanup agreement. The Mansion Grove RAP required the installation and operation of groundwater extraction wells, conveyance piping and monitoring wells on the Property. The Rivermark RAP required that groundwater beneath the Property be remediated by the construction of an extraction trench at the property boundary of the Mansion Grove property, and an additional extraction trench at the leading edge of the contaminated groundwater. Instead of the extraction trench at the property boundary, Mallinckrodt, with the Department's approval and at its direction, installed three extraction wells at the property boundary of the Mansion Grove property. The purpose of these wells is to prevent further contamination from migrating off the Mansion Grove property onto the Property. The groundwater from these wells is treated in the existing Mansion Grove groundwater treatment system. The purpose of the extraction trench at the leading edge of the contamination is to ensure that contamination does not move into the residential area downgradient of the Property. The groundwater from the trench will be either discharged directly to the sanitary sewer or will be treated with granular activated carbon prior to discharge to the storm sewer. The Rivermark RAP also required the installation of monitoring wells and conveyance piping as part of the trench remedial system. Because hazardous substances which include: tetrachloroethylene (PCE), trichloroethylene (TCE), and vinyl chloride (VC) are present in the groundwater as hazardous substances as defined in H&SC Section 25316, and also defined as hazardous material in H&SC Section 252260 pursuant to Chapter 6.8 of Division 20 of the H&SC, the Rivermark RAP provides that a deed restriction be imposed on the Property as part of the remediation until the remedial action objectives for this RAP are met. The Department circulated the Rivermark RAP, which contains a Final Health Risk Assessment, together with the California Environmental Quality Act, Public Resources Code section 21000 et seq. documentation for public review and comment. The remediation under the Mansion Grove and Rivermark RAPs includes the installation, operation and maintenance of the extraction trench, the extraction wells, the groundwater treatment system, and the monitoring wells described in the engineering drawing attached as Exhibit "B" hereto. Since the groundwater contamination on the Property is part of contamination emanating from the Mansion Grove property, the operation and maintenance of the groundwater extraction and treatment system and monitoring wells will be conducted by the Responsible Parties (or their successors in interest) identified in the Remedial Action Order for the Mansion Grove Site, Docket No. HSA 88/89-019, and any subsequent amendments.

1.03. Groundwater at the Restricted Property fluctuates seasonally but generally is found at a depth of about 20 feet below ground surface. The following contaminants

and concentrations have been detected in the groundwater: tetrachloroethylene (PCE) (600 parts per billion (ppb)), trichloroethylene (TCE) (300 ppb), and vinyl chloride (16 ppb). The Risk Assessment approved in connection with the Rivermark RAP concludes that the Property can be safely used as a public park without unacceptable risk to future recreational park users.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Restricted Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the Owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory

encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect the proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops).
- (b) Drilling for water, oil, or gas without prior written approval by the Department.
- (c) Extraction of groundwater for purposes other than site remediation or construction dewatering.
- (d) All uses and developments of the Restricted Property shall preserve the integrity of the extraction trench, the extraction wells, the groundwater treatment system, and the monitoring wells as described in Exhibit "B" and as may be modified upon written approval of the Department.

4.03. Permitted uses and Improvements. The Property may be used for the purposes of a public park. Subject to the requirements of 4.02 (d) above, improvements related to public park uses such as paved walkways, tennis courts, trails, play fields, rest rooms, paved parking lots and paved roads and driveways are permitted. Nothing in section 4.01 shall prohibit the use of the Property for school sports, recreational sport camps or similar recreational or park activities for children or persons under the age of 21.

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.05. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the operation and maintenance shall have reasonable right of entry and access to the Property for the purpose of operating and maintaining the groundwater remedial systems subject to such reasonable terms and conditions required by the Owner until the Department determines that no further operation and maintenance is required.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner, subsequent transferee or other occupant to comply with any of the Restrictions or obligations under this Covenant specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner discontinue unpermitted uses or modify or remove any unpermitted improvements constructed or placed upon any portion of the Property in violation of the Restrictions if the Department finds that such improvements present an unacceptable risk to human health or the environment. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law. Once the Property has been transferred to the City of Santa Clara, the Department of General Services, as Covenantor and/or Owner, shall have no further obligations under this Covenant, and any obligations to comply with any of the Restrictions or terms of this Covenant shall be obligations of the City of Santa Clara.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from or modification of the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Santa Clara within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as

used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Department of General Services
Real Estate Service Division
707 3rd Street, Suite 6-130
West Sacramento, California 95605
Attn: Frank Davidson

To Department:
Department of Toxic Substances Control
Coastal Cleanup Operations Branch
700 Heinz Avenue
Berkeley, California 94710
Attention: Barbara J. Cook, P.E., Chief

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph. Upon a transfer of the Property, the new owner shall notify the Department within thirty (30) days regarding who is to receive notices on their behalf.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Department of General Services

By:

Title:

John H. Brooks
John Brooks, Acting Assistant Deputy Director
Real Estate Services Division

Date:

10/13/04

Department of Toxic Substances Control

By:

Title:

Barbara J. Cook
Barbara J. Cook, P.E., Branch Chief

Date:

10/14/2004

STATE OF CALIFORNIA)

COUNTY OF Yolo)

On this 13th day of OCTOBER, in the year 2004,

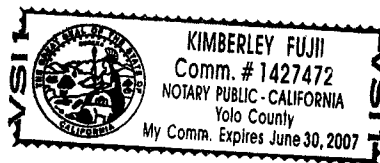
before me KIMBERLEY FUJII, Notary, personally appeared

JOHN H. BROOKS,

personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is /~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *[Handwritten Signature]*



CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of

CALIFORNIA

County of

ALAMEDA

On

10/14/04

before me,

FRANK PISCITELLI

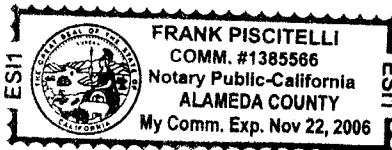
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

BARBARA JEAN COOK

Name(s) of Signer(s)

☐ personally known to me -OR- ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

Agnew's Development

Document Date:

Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:

- ☐ Individual
- ☐ Corporate Officer
- ☐ Titles(s):
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT
OF SIGNER
Top of Thumb here

Signer's Name:

- ☐ Individual
- ☐ Corporate Officer
- ☐ Title(s):
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT
OF SIGNER
Top of Thumb here

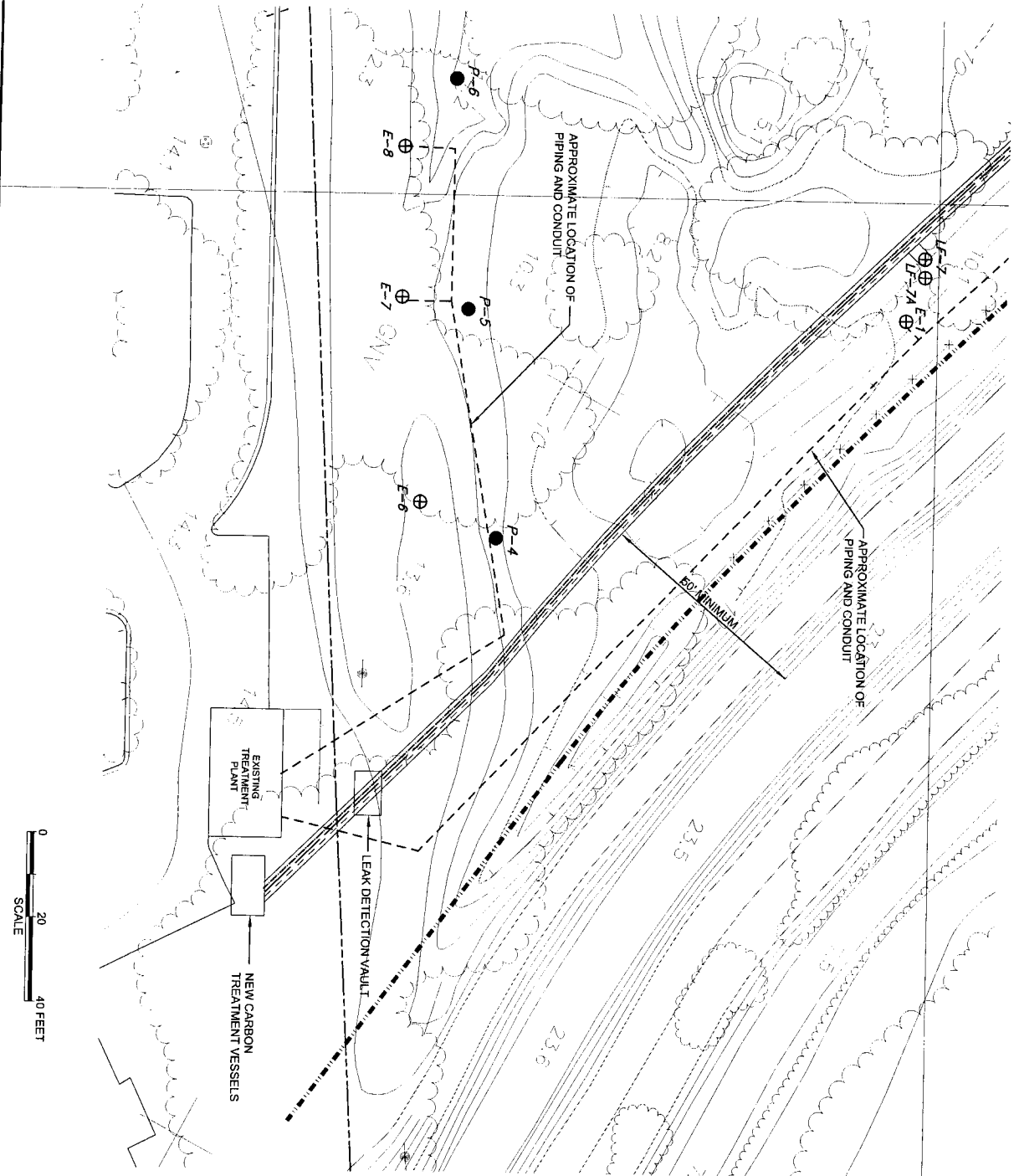
EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Santa Clara, County of Santa Clara, State of California,
described as follows:

Lot S, of Tract 9553, filed for record on September 29, 2004, in Book 775 of Maps, at
pages 49-55, Santa Clara County Records.

APN: Ptn. 97-08-45



0 20 40 FEET
SCALE

LEGEND

- ⊗ APPROXIMATE LOCATION OF NEW WELL OR BORING
- ⊕ APPROXIMATE LOCATION OF EXISTING EXTRACTION WELL OR PREVIOUS BORING (EW-5)
- NEW MONITORING WELL TO EVALUATE CONTAMINANT MIGRATION AND TRENCH INFLUENCE.
- NEW MONITORING WELL TO ASSESS TRENCH PERFORMANCE
- WATER LEVEL MONITORING PROBE
- ▲ NEW PIEZOMETER (PZ-4)
- APPROXIMATE LOCATION OF GEOLOGIC CROSS SECTION
- APPROXIMATE SANTA CLARA VALLEY WATER DISTRICT RIGHT-OF-WAY LIMIT

AS-BUILT SITE PLAN AND PIPING PLAN

RIVERMARK DEVELOPMENT
Santa Clara, California

LOWNEY ASSOCIATES
Environmental/Geotechnical/Engineering Services

EXHIBIT B
1124-8X

